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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/824,954
Filing Date: April 14, 2004
Appellant(s): DRUMMOND, STEPHEN M.

Ruth J. Ma
Reg. No. 55,414
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed **17 September 2009** appealing from the
Office action mailed **11 February 2009**.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0143693 A1	Soestbergen et al.	10-2002
2004/0088179 A1	Cogen et al.	05-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. **Claims 13-15, 20-21 and 49** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Soestbergen et al. (US 2002/0143693 A1)** (hereinafter "**Soestbergen**") in view of **Cogen**.
3. **With respect to claims 1-12:** (Cancelled)
4. **With respect to claim 13:** (Currently amended) Soestbergen teaches:
 - storing a volume of emission reduction benefit in memory associated with at least one computing device, the volume of emission reduction benefit derived from at least one emission reduction project created by a supplier in connection with carbon dioxide equivalent emission of the supplier;

(paragraphs 70, 96-97, and 114-116 – GHG information is stored on system)

- receiving an indication, from a buyer at a point of sale terminal in communication with the at least one computing device, to purchase at least one of a product and a service; (paragraphs 97-99 – point of sale system used to purchase green house gas emission offsets)
- determining an amount of carbon dioxide reduction benefit necessary for the at least one of the product and the service to be emission neutral based at least in part of an amount of carbon dioxide generated by the at least one of the product and the service; (paragraphs 70, 96-97, 106-107 and 114-116 – CO₂ from fossil fuels is calculated)
- communicating to the buyer the amount of carbon dioxide reduction benefit necessary for the at least one of the product or the service to be emission neutral (paragraphs 70, 96-97, and 114-116 – GHG information is stored on system; information is calculated and greenhouse gas used and fossil fuel burned is calculated; computer contains output device)
- receiving a request from the buyer to purchase at least a portion of the amount of carbon dioxide reduction benefit necessary for the at least one of the product or the service to be emission neutral; (paragraphs 18 and 23, 70, 96-99 and 114-116 – purchase request received from a purchaser; GHG calculate and offsets ERC offsets purchased based on results);

- reducing the volume of emission reduction benefit to account for the at least a portion of the carbon dioxide benefit purchased by the buyer; (paragraphs 18 and 23, 70, 96-99 and 114-116 – purchase request received from a purchaser; GHG calculate and offsets ERC offsets purchased based on results) and

Soestbergen does not teach in response to receiving the request, providing the buyer with an emission retirement guarantee, wherein the emission retirement guarantee prevents the emission reduction benefit in the warehouse from being repurchased. However, Cogen teaches:

- in response to receiving the purchase, providing the buyer with an emission retirement guarantee, wherein the emission retirement guarantee prevents the purchased amount of emission reduction benefit from being repurchased. (paragraph 6 – “verified emission reductions (VERs) associated with emission reduction projects (ERPs) and converting the VERs into mutual portfolio units (MPUs) based on predetermined factors; paragraph 50 teaches creating a record in a database for each VER. The record may include identification information such as an account number related to the seller of the VER, a serial number of each VER tonne deposited, a code for each type of VER deposited, a code for the country where the ERP takes place, a code identifying the verifier, the date of verification, the date/time of deposit, and other information.”; paragraphs 8, 20, 71 76, 78 and 79 – ownership

transferred between parties; MPUs can be redeemed for retirement purposes; project information “must be packaged to ensure sufficient information is disclosed to convey the high quality of participants and VERs within the system”; product assessed by third party experts)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the benefits to buyers with emission retirement guarantees because this can lead to more emission reducing projects being converted to verified emissions reductions and less likelihood of fraud. (Cogen paragraph 19).

5. **With respect to claim 14:** Soestbergen teaches:

- dividing the emission reduction benefits into a plurality of smaller benefits; (Figs. 4-11, items 203-205; paragraph 71 – ERCs are “calculated and divided into 5 accounts/funds by a percentage”) and
- providing the plurality of smaller benefits to a plurality of buyers. (paragraphs 18, 23 and 26 – emission reduction value is credited to the purchasers account as an asset)

6. **With respect to claim 15:** (Currently amended) Soestbergen teaches wherein the stored volume of emission reduction benefit comprise an aggregate of emission reduction benefits from a plurality of suppliers. (Figs. 4-11, items 203-205; paragraph 71 – ERCs are “calculated and divided into 5 accounts/funds by a percentage”; paragraphs 70, 96-97, and 114-116 – GHG information is stored on system; Fig. 11b – carbon funds vary in type and supplier)

7. **With respect to claims 16-19:** (Cancelled)

8. **With respect to claim 20:** (Currently amended) Soestbergen teaches the limitations in the rejections above. However, Soestbergen does not teach providing the plurality of buyers with a listing display that displays a plurality of emission reducing projects. Cogen teaches providing the plurality of buyers with a listing display that displays a plurality of emission reducing projects that will be reduced to account for buyers purchased carbon dioxide reduction benefit. (paragraphs 50 and 59 – record created in database for each VER; national registry used with serial number that links to project identifying information; paragraphs 18-23, 70, 96-99 and 114-116 – purchase request received from a purchaser; GHG calculate and offsets ERC offsets purchased based on results; paragraph 21 that a standard computer system is used. The computer system can include a network interface having hardware and software components...the network interface may allow the system 10 to...display information related to ERPs, MPUs or other information.")

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the benefits to buyers with the display of the projects because of the need to make buyers aware of what is available to be purchased.

9. **With respect to claim 21:** Soestbergen teaches the limitations in the rejections above. However, Soestbergen does not teach providing each of the plurality of buyers with an opportunity to search for the emission reducing project. Cogen teaches providing each of the plurality of buyers with an opportunity to search for the emission reducing project. (paragraphs 50 and 59 – record created in database for each VER; national registry used with serial number that links to project identifying information)

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the benefits to buyers with the ability to search for projects because of the need to make buyers aware of what is available to be purchased.

10. **With respect to claims 22-48:** (Cancelled)

11. **With respect to claim 49: (NEW)** Soestbergen teaches determining a price for the determined amount of carbon dioxide reduction benefit necessary for the at least one of the product and service to be emission neutral and communicating to the buyer the determined price. (Figs. 4-11, items 203-205; paragraphs 71, and 114-116 – ERCs are “calculated and divided into 5 accounts/funds by a percentage”; computer/system contains output device)

(10) Response to Argument

I. There is a Prima Facie Showing of Obviousness in the Rejection of Claims 13-15, 20-21, and 49 using in the Combination of Soestbergen in view Cogen was correct.

Claims rejected using 35 USC 103 must be analyzed in view of each other and not separately. To rebut an obviousness argument Applicant must argue whether it was obvious to combine the two references used in the rejection. There is no mandate in the Manual of Patent Examining Procedure that an additional reference needs to be presented to show motivation to combine. MPEP Section 2143 states “Combining prior art elements according to known methods to yield predictable results”. Both references

teach emissions reduction. Also, the art of searching and providing an item, which can be searched are old and well known while the results predictable.

A. Claim 13 is appropriately rejected as obvious under 35 USC 103(a):

Independent claim 13 was adequately rejected using Soestbergen in view of Cogen. Soestbergen teaches a system for banking and exchanging emission credits. Paragraph 79 – “Retired 208: This fund is where account holder’s can permanently retire credits. ERC’s can enter this fund, but cannot be withdrawn. There is also a “retired” status of credits that have been purchased as offsetting a particular GHG emission source. This fund is deposit only.”

Claim 13 states “an emission retirement guarantee”. Cogen teaches in paragraph 20 the retirement of emission reductions. Paragraph 6 states “verified emission reductions (VERs) associated with emission reduction projects (ERPs) and converting the VERs into mutual portfolio units (MPUs) based on predetermined factors. Paragraph 71 states “it may be important to provide information regarding the type of VERs within the portfolio and the identity of the contributors to the portfolio.” Furthermore, paragraph 76 states “The purchasers may obtain MPUs from the system 10 with the confidence that the VERs qualifying for inclusion in the system are of a sufficient quality.” The term “confidence...qualifying for inclusion...sufficient quality” shows that there is a presumed guarantee that the credits are adequate alerting that it is safe for purchasing and keeps unqualified items out of the portfolio.

Also, paragraph 50 teaches creating a record in a database for each VER. The record may include identification information such as an account number related to the seller of the VER, a serial number of each VER tonne deposited, a code for each type of VER deposited, a code for the country where the ERP takes place, a code identifying the verifier, the date of verification, the date/time of deposit, and other information." The notification All this data verifies that emission information is unique and not duplicated.

Furthermore, the motivation to combine does not have to be presented by a reference. According to the KSR decision the motivation to combine can be shown and explained to be obvious. Both references discuss retirement of credits. The Cogen reference teaches that credits can be resold and gives the requirements for the resale.

B. Claim 20 is appropriately rejected as obvious under 35 USC 103(a):

Claim 20 was adequately rejected using Soestbergen in view of Cogen. Claim 20 states "providing the buyer with a listing that displays a plurality of emission reducing projects." In Cogen paragraph 50 teaches creating a record in a database for each VER. The record may include identification information such as an account number related to the seller of the VER, a serial number of each VER tonne deposited, a code for each type of VER deposited, a code for the country where the ERP takes place, a code identifying the verifier, the date of verification, the date/time of deposit, and other information." Cogen also teaches in paragraph 21 that a standard computer system is used. The computer system can include a network interface having hardware and software components...the network interface may allow the system 10 to...display

information related to ERPs, MPUs or other information." ERPs are emission reducing projects. Applicants limitations are clearly presented in the Cogen reference which would have been an obvious combination with Soestbergen.

C. claim 21:

Claim 21 was adequately rejected using Soestbergen in view of Cogen. Claim 21 states "providing the buyer with an opportunity to search for the emission reducing project". The limitation states that the buyer is provided with an opportunity. Soestbergen in paragraph 69 teaches the ability to search a database. Cogen provides a database. The combination of Cogen and Soestbergen, which applicant does not discuss would make one of ordinary skill in the art find obvious that the opportunity to search was provided.

Applicant argues but never claims the direct ability to search the database. Providing the ability to search leaves the connotation that searching never really has to take place. Searching is a mere option. The database provides this option.

Claims rejected using 35 USC 103 must be analyzed in view of each other and not separately. To rebut an obviousness argument Applicant must argue whether it was obvious to combine the two references used in the rejection. There is no mandate in the Manual of Patent Examining Procedure that an additional reference needs to be presented to show motivation to combine. MPEP Section 2143 states "Combining prior art elements according to known methods to yield predictable results". Both references

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teach emissions reduction. Also, the art of searching and providing an item, which can be searched are old and well known while the results predictable.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Heidi Riviere/

Examiner, Art Unit 3689

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Appeals Conference Specialist